A **MOHD YUSOF MOHD RAKIM & ANOR**

v.

SHANTA PERIASAMY & ANOR

B HIGH COURT MALAYA, IPOH
VT SINGHAM J
[CIVIL APPEAL NO. 12-109-2002]
4 MAY 2006

C ***ROAD TRAFFIC:*** *Negligence - Fatal accident - Motor van collided into motor bus - Driver of motor bus found 100% liable although he denied negligence - Driver of motor van not called as witness - Whether adverse inference under s. 114(g) Evidence Act 1950 applicable - Whether appeal against 100% liability should be allowed*

D ***EVIDENCE:*** *Adverse inference - Road accident - Motor van collided into motor bus - Driver of motor bus found 100% liable although he denied negligence - Driver of motor van not called as witness - Whether adverse inference under s. 114(g) Evidence Act 1950 applicable - Whether appeal against 100% liability should be allowed*

E

The defendants appealed against the decision of the sessions court judge in finding the 1st defendant 100% liable for an accident that involved a bus driven by the 1st defendant and a van in which a passenger ('the deceased') had died as a result thereof. The main F issue was whether an adverse inference ought to be drawn against the plaintiffs (who had brought this action on behalf of the deceased) under s. 114(g) of the Evidence Act 1950 for not calling the driver of the van as a witness.

G **Held (allowing the appeal):**

(1) From the record of appeal, there was insufficient evidence to attach any negligence against the 1st defendant. There was no duty on the part of the 1st defendant to prove that he was H not negligent until the plaintiffs had established negligence against him. The trial court could not stretch its powers or discretion to find the 1st defendant liable just for the sake of ensuring compensation to the deceased's family without first making a finding on whether negligence had been established. I (paras 11 & 12)

(2) The plaintiffs failed to produce the most essential and material witness, namely, the driver of the motor van to prove negligence against the 1st defendant. The fact that the 1st defendant applied to issue third party proceedings against the said driver did not relieve the plaintiffs of their duty to produce him as a witness. The accident was within his knowledge and since he had put the plaintiffs on notice denying negligence on his part, the plaintiffs ought to have called him as witness. The court, therefore, was entitled to presume that his evidence would not favour the plaintiffs' case. It followed that an adverse inference should be invoked against the plaintiffs under s. 114(g) of the Evidence Act 1950 and that the learned judge was wrong in not invoking the said section. (paras 14, 15, 18 & 20)

Case(s) referred to:

Chan Yoke Lain v. Pacific and Oriental Insurance Co Sdn Bhd [1999] 1 CLJ 179 CA ***(refd)***

Chia Kiat v. Rex [1937] MLJ 248 ***(foll)***

Choo Kok Beng v. Choo Kok Hoe & Ors [1984] 2 MLJ 165 ***(refd)***

Chung Hwa Ying v. Phang Mun Mooi & Anor [1989] 2 MLJ 693 ***(foll)***

Coglan v. Cumberland [1898] 1 Ch 704 ***(foll)***

Damai Cheras Sdn Bhd & Anor v. Poothapillai Krishnamorthy [1999] 5 CLJ 576 HC ***(dist)***

Eastern Enterprise Ltd v. Ong Choo Kim [1969] 1 MLJ 236 ***(refd)***

Fardon lwn. Harcourt-Rivington [1932] All ER 81 ***(refd)***

Gopal Krishnajiketkar v. Mohamed Hj Latif AIR [1968] SC 1413 ***(refd)***

Hirschhorn v. Evens [1938] 3 All ER ***(refd)***

Jaafar Shaari & Anor v. Tan Lip Eng & Anor [1997] 4 CLJ 509 SC ***(refd)***

Jafri Elias v. Khor Tan Seah [1992] 2 CLJ 1016; [1992] 2 CLJ (Rep) 601 HC ***(foll)***

Juahir Sadikon v. Perbadanan Kemajuan Ekonomi Negeri Johor [1996] 4 CLJ 1 CA ***(foll)***

Karumalay Vanniyan & Anor v. Ananthan Rethinam [2005] 2 CLJ 429 CA ***(refd)***

Khaw Cheng Bok v. Khaw Cheng Poon [1998] 3 MLJ 457 ***(refd)***

Lee Ing Chin & Ors v. Gan Yook Chin & Anor [2003] 2 CLJ 19 CA ***(refd)***

Lee Sang Cheah v. Rex [1946] 12 MLJ 22 ***(refd)***

Len Min Kong v. United Malayan Banking Corp Bhd & Anor Appeal [1998] 2 CLJ 879 CA ***(refd)***

Lim Soh Meng & Anor v. Krishnan [1967] 1 MLJ 8 ***(foll)***

Muniandy Periyan lwn. Eric Chew Wai Keat & Anor [2003] 3 MLJ 527 ***(foll)***

Neo Chan Eng lwn. Koh Yong Hoe [1960] MLJ 291 ***(foll)***

Ng Chui Sia lwn. Maimon Ali [1983] 1 MLJ 110 ***(foll)***

Ramoo v. Gan Soo Swee & Anor [1971] 1 MLJ 235 ***(refd)***
Reliance Omnibus Co Sdn Bhd & Anor v. Ishak Mohd Jaafar & Anor [1993] 4 CLJ 291 HC ***(dist)***
Robins v. National Trust Co [1927] AC ***(refd)***
See Keng Wah v. Lim Tew Hong [1957] MLJ 137 ***(foll)***
Selvaduray v. Chinniah [1939] MLJ 253 ***(refd)***
Sivalingam Periasamy v. Periasamy & Anor [1996] 4 CLJ 545 CA ***(foll)***
Tan Kim Khuan v. Tan Kee Kiat (M) Sdn Bhd [1998] 1 CLJ Supp 147 HC ***(refd)***
The Glannibanta [1876] LR 1 PD 283 ***(foll)***
Yew Yoke & Anor lwn. Mah Poay Koh & Anor [1970] 1 MLJ 57 ***(foll)***

Legislation referred to:
Evidence Act 1950, ss. 103, 114(g)

For the appellants/defendants - Leong Sai Hwa; M/s CK Leong & Co
For the respondents/plaintiffs - T Ellangovan; M/s Kula & Assoc

Reported by Usha Thiagarajah

JUDGMENT

VT Singham J:

[1] This is an appeal by the defendants against the decision of the learned Sessions Court Judge Ipoh who had found the driver of m/bas, No. ACC 8966, the first defendant 100% liable on 27 September 2002 for the death of the passenger in m/van No. ABS 8472 arising out of a motor accident on 11 May 1993 involving the m/bas driven by the first defendant and the m/van in which the deceased was travelling as a passenger.

[2] By the statement of claim and under the particulars of negligence, the plaintiffs have alleged that on 11 May 1993 at/ about 6.10pm while the deceased was travelling in m/van No. ABS 8472 at/near the 10th kilometre Manong – Kuala Kangsar road (Kg. Lempor) Manong, Perak, the m/bus which was driven by the first defendant negligently overtook and/or attempted to overtake the said m/van and suddenly collided into the said m/van. It is also *inter alia* alleged that the first defendant had negligently and suddenly stopped the m/bus and caused an obstruction to the said m/van.

[3] On the other hand, the first defendant who was the driver of the m/bus, has testified in court that he had stopped at the place of the accident for about two minutes to allow students who were passengers in the m/bus to alight. After he had waited for about two minutes he heard a sound from the rear of the m/bas and when he got down he found the m/van had got stuck to his m/bus. He denied overtaking any vehicle or the m/van or that the accident occurred after he overtook m/van, or he had entered back into his lane and had stopped as alleged.

[4] The main issue in the instant appeal is, whether the learned Sessions Court judge was correct in holding that the first defendant was 100% liable for the accident. In this judgement, the appellants and respondents will be referred to as the defendants and plaintiffs respectively. In other words, have the plaintiffs discharged the onus of establishing negligence against the first defendant on a balance of probabilities even if the first defendant's version of how the accident occurred is disbelieved.

[5] At the outset of this appeal, it is important to state that by consent, the police report No. 196/93 (Manong) lodged by the driver of m/van No. ABS 8472 on 14 June 1993 is excluded from the record of appeal and disregarded for the purpose of this appeal as being not part of the evidence at the trial in the Sessions Court. (See *Jaafar bin Shaari & Anor v. Tan Lip Eng & Anor* [1997] 4 CLJ 509).

[6] This court has reminded itself that though the principles on which this court in its appellate jurisdiction will be slow to review the findings of fact of a trial court which are well settled, the application or non-application may not be satisfactory in all cases as each appeal is considered on its own set of facts, the reasoning and the decision of the trial court. However, if the learned Sessions Court judge is found to be wrong, this court in its appellate jurisdiction and on well established principles cannot just abrogate its function but has to review and if necessary interfere with the finding where in the instant appeal, the first defendant has been found to be 100% liable for the accident. In *Chia Han Kiat v. Rex* [1937] MLJ 248, Terrell Ag. CJ said:

> This is admittedly an appeal against findings of fact, and I fully indorse the principle that an appellate Court should but rarely interfere with conclusion arrived at by the Judge or Magistrate who has had the advantage of hearing the witnesses and obtaining

an impression of their veracity from their demeanour. But it is the duty of an Appellate Court to be Judge of fact as well as of law, and it would be abrogating its function if it made a hard and fast rule never to interfere with findings of fact, and felt bound to support a judgement which, on a review of all the evidence, it considered to be clearly wrong". (See *Development and Commercial Bank v. Num Tjuan Sdn. Bhd.* [1989] 1 MLJ 475 at page 476-477), *Sivalingam Periasamy v. Periasamy & Anor* [1996] 4 CLJ 545 at page 550, *Coghlan v. Cumberland* [1898] 4 Ch D. 24 and *Bigsby v. Dickson* [1876] 4 Ch D 24).

[7] On the other hand, if the learned Sessions Court judge has misapplied or failed to appreciate the significance of any part of the evidence, it may have an important bearing on the weight which the appellate court attaches to the evidence as a whole. (See *Lee Sang Cheah v. Rex* [1946] 12 MLJ 22 (SSR) at p. 24). (See also *Chung Hwa Ying v. Phang Mun Mooi & Anor* [1989] 2 MLJ 693 at p. 694).

[8] This court is of the view that where the court is left in doubt upon reading the evidence produced on behalf of the plaintiffs and the defendants as to whether any negligence has been proved against the first defendant, the result would be the plaintiffs had failed to discharge the burden which lies upon them of establishing negligence against the first defendant. (See *Lim Soh Meng and Anor v. Krishnan* [1967] 1 MLJ 8). Based on the evidence as contained in the record of appeal, it cannot be disputed that the plaintiffs have in fact failed to establish any negligence or on the particulars of negligence as pleaded and as alleged in para. 3 of the statement of claim. In other words, on the totality of the evidence, the plaintiffs have failed to establish any negligence against the first defendant.

[9] This court finds that the decision of the learned Sessions Court on liability is not a reasoned decision and contains serious error of law and fact, misdirection, and defect in its reasoning. In fact, the reasoning relied on by the learned Sessions Court in finding the first defendant 100% liable for the accident is a misreading and misapplication of the judgment in *Reliance Omnibus Co. Sdn. Bhd & Anor v. Ishak bin Mohd Jaafar & Anor* [1993] 4 CLJ 291 and *Damai Cheras Sdn. Bhd. & Anor v. Poothapillai Krishnamorthy* [1999] 5 CLJ 576 and also the common law principle on liability where it involves an innocent passenger. The reasoning applied to find the first defendant 100% liable for the

accident is a "faulty judicial reasoning" which would justify this court interfering. (See *Len Min Kong v. United Malayan Banking Corp. Bhd & Anor Appeal* [1998] 2 CLJ 879). The first defendant, in the instant appeal cannot be held liable in a mechanical fashion to the plaintiffs' claim without the trial court having first found whether the first defendant is negligent and make an express finding to the extent of his negligence which the learned Sessions Court Judge had failed to do so. (See *Jafri bin Elias v. Khor Tan Seah* [1992] 2 CLJ 1016; [1992] 2 CLJ (Rep) 601 at p. 1019 and *Choo Kok Beng v. Choo Kok Hoe & Ors* [1984] 2 MLJ 165).

[10] This court has considered that it has been denied the advantage which the trial judge had of seeing and hearing the witnesses and observing the manner in which their evidence have been given and that the cold print in the record of appeal cannot give any indication of the deameanour of the witnesses and therefore, its findings of fact should not be disturbed in appeal unless for good and cogent reasons. However, if there are other material factors which have escaped attention or have been disregarded by the learned Sessions Court judge which would have a bearing to the decision, this court would be justified in setting aside the findings of the trial court and instead arrive at its own conclusion on facts. (See (i) *The Glannibanta* [1876] LR 1 PD 283 at p. 287, (ii) *Coglan v. Cumberland* [1898] 1 Ch 704 p. 705, (iii) *Sivalingam a/l Periasamy v. Periasamy & Anor* [1996] 4 CLJ 545) and (iv) *Lee Ing Chin @ Lee Teck Seng & Ors v. Gan Yook Chin & Anor* [2003] 2 CLJ 19).

[11] On the totality of the evidence, both oral and documentary as found in the cold print in the record of appeal, this court finds there was insufficient evidence to attach any negligence against the first defendant as required by law or even to draw any inference against the first defendant. It is important to be reminded that there is no duty on the part of the first defendant in the instant appeal to prove that he is not negligent for the accident until the plaintiffs have established negligence against the first defendant which the plaintiffs have failed. (See (i) *Chung Hwa Ying v. Phang Mun Mooi & Anor* [1987] 2 MLJ 693 at p. 694, (ii) *Jafri bin Elias v. Khor Tan Seah* [1992] 2 CLJ 1016 at p. 1019 and (iii) *Eastern Enterprise Ltd. v. Ong Choo Kim* [1969] 1 MLJ 236 at p. 244).

[12] Nevertheless, on the set of facts in the instant appeal, it does appear to this court that the learned Sessions Court judge had missed or disregarded material facts which were brought to his attention. In other words, there are glaringly misdirection and misapplication of the law to the facts. Moral philosophy or consideration has no relevance to liability at law and it runs counter to well established and wholly acceptable law to claim in negligence. The trial court cannot stretch its powers or discretion to find the first defendant liable just for the sake of ensuring compensation to the deceased's family without first making a finding whether the plaintiffs have established negligence against the first defendant on the balance of probabilities which the learned Sessions Court judge had failed to do in the instant appeal. It is desirable in cases of negligence, as in any other field that the law should be maintained such a measure of certainty as is consistent with the demands of justice.

[13] It is also not open to this court to try and make out a case for the plaintiffs or to attach liability even to the extend of finding 1% negligence against the first defendant as submitted by learned counsel for the respondent as a desperate attempt so that the deceased's family, the plaintiffs will be able to obtain compensation on 100% as the deceased was a passenger in m/van No. ABS 8472 unless the plaintiffs have infact established negligence against the first defendant on the balance of probabilities.

[14] In the instant appeal, since the plaintiffs had decided to proceed with their claim for alleged negligence against the first defendant and close its case without producing any evidence to establish negligence and without producing the most essential and material witness, being the driver of the said m/van where there is no evidence before the court that he was not available or cannot be traced nor a subpoena was applied and it could not be served, it is the risk which the plaintiffs have taken and it is not the defendants' fault. The fact that the first defendant has applied to issue third party proceedings against the driver of the m/van No. ABS 8472 and that was the reason why the driver of the said m/van was not called as a witness for the plaintiffs as submitted by learned counsel for the plaintiffs from the Bar is misplaced in law and does not relieve the plaintiffs of their duty to produce evidence which was available to establish negligence against that first defendant which is lacking in the instant appeal.

[15] Where a party, in the instant case, the plaintiffs have the means of proving the claim against the first defendant, if a true one, the proper course was to produce the driver of the m/van to court and establish their case and not shrink from taking such steps. In the instant appeal, how the accident occurred is within the knowledge of the driver of the m/van and therefore it was incumbent on the part of the plaintiffs to have called the driver of the m/van as their witness to establish negligence against the first defendant if in fact the first defendant was negligent for the collision.

[16] As the plaintiffs having chosen and elected not to lead evidence through the driver of the said m/van to establish their case, this court could only hold that there was no evidence or its version on behalf of the plaintiffs as to how the accident had occurred before the trial court to adjudicate upon. On the other hand, even without the evidence or version of the driver of the m/van as to how the accident occurred, this court has also considered the admissible documentary evidence in law produced on behalf of the plaintiffs and still found that the plaintiffs had not established any negligence against the first defendant in order for the first defendant to answer the plaintiffs' claim. However, since the first defendant chosed to testify and placed his version of how the accident occurred before the court, it is the duty of the trial court at that stage and at the conclusion of the defence case to consider and evaluate whether on the totality of the evidence, the plaintiffs had established any negligence against the first defendant. This court is of the view that even on the totality of the evidence which included the first defendant's version of how the accident occurred, the plaintiffs have still failed to establish on the balance of probabilities any negligence as pleaded against the first defendant. (See (i) *Neo Chan Eng lwn. Koh Yong Hoe* [1960] MLJ 291, (ii) *Yew Yoke & Anor lwn. Mah Poay Koh & Anor* [1970] 1 MLJ 57 p. 59, (iii) *Ng Chui Sia lwn. Maimon bte Ali* [1983] 1 MLJ 110 dan (iv) *Muniandy a/l Periyan lwn. Eric Chew Wai Keat & Anor* [2003] 3 MLJ 527). Accordingly, the learned Sessions Court judge ought to have made such a finding and dismissed the plaintiffs' claim which he had failed to do.

[17] In the instant appeal, the Maxim that the court may presume that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it or without advancing any reason or explanation fails to produce it is applicable. The non-production of the driver of the m/van in which

the deceased was travelling cannot be said as an inconsequential witness. It would appear from the facts that it is a reasonable inference which can be drawn in the absence of any or any reasonable explanation that there is deliberate withholding of a witness and the learned Sessions Court judge was wrong in not invoking an adverse inference under s. 114(g) of the Evidence Act 1950 against the plaintiffs for not calling the driver of the said m/van as a witness to throw light to the court as to how the accident occurred.

[18] In the instant appeal, the first defendant has denied he was negligent for the accident and has put the plaintiffs on notice by the statement of defence and his police report as to how the accident occurred. Therefore, there was an obligation on the part of the plaintiffs to have produced the driver of the m/van to establish the plaintiffs' allegation of negligence as pleaded against the first defendant which rest with the plaintiffs. (See s. 103 of the Evidence Act 1950 (i) *Eastern Enterprise Ltd. v. Ong Choo Kim* [1969] 1 MLJ 236 at p. 244 and *Tan Kim Khuan v. Tan Kee Kiat (M) Sdn. Bhd.* [1998] 1 CLJ 147). There was no reason or evidence adduced on behalf of the plaintiffs for not producing the said driver of the m/van as their witness and to make him available for cross-examination as the party who alleged must be able to establish its case. Therefore, an adverse inference as provided under s. 114(g) of the Evidence Act 1950 ought to be invoked against the plaintiffs. (See *Juahir bin Sadikon v. Perbadanan Kemajuan Ekonomi Negeri Johor* [1996] 4 CLJ 1).

[19] On the facts in the instant case and bearing in mind that there is a police report lodged by the driver of the m/van in which the deceased was travelling at the time of the collision, it is not only proper but appropriate for the learned Sessions Court to have drawn an adverse inference under s. 114(g) of the Evidence Act 1950 against the plaintiffs as there is no evidence that the witness could not be produced or traced or the plaintiffs were not in a position to produce better evidence but in fact abstained from doing so. (See *Gopal Krishnajiketkar v. Mohamed Haji Latif* AIR [1968] SC 1413). There is no evidence whether any subpoena was applied or issued to the driver of the m/van to make him attend court. Under the circumstances and on the facts in the instant appeal, there was a strong and compelling reason for the exercise of powers of the learned Sessions Court judge to draw

an adverse inference against the plaintiffs as correctly submitted by learned counsel for the defendants in the court below and at this appeal.

[20] The court is entitled to the best evidence available before it can be called upon for a decision and if the plaintiffs have failed to call a material or essential witness, in the instant case, the driver of the m/van as conceded by learned counsel for the plaintiffs and there is no satisfactory explanation why the said driver of the m/van was not called as witness for the plaintiffs, the court is entitled to presume, in his absence, that his evidence would not be in favour of the plaintiffs' case. (See *See Keng Wah v. Lim Tew Hong* [1957] MLJ 137 at p. 138). In the instant case, the first plaintiff has failed to discharge the onus thrown upon her and learned counsel for the defendants was justified in submitting to invoke s. 114(g) of the Evidence Act 1950 as the burden was on the plaintiffs to prove the particular fact against the first defendant. (See (i) *Selvaduray v. Chinniah* [1939] MLJ 253 p. 253, (ii) *Ramoo v. Gan Soo Swee & Anor* [1971] 1 MLJ 235, (iii) *MUI Bank Bhd. Johor v. Tee Puat Kuay*, (iv) *Khaw Cheng Bok v. Khaw Cheng Poon* [1998] 3 MLJ 457 at p. 572 dan (v) *Chan Yoke Lain v. Pacific and Oriental Insurance Co. Sdn. Bhd.* [1999] 1 CLJ 179).

[21] Be that as it may, even assuming that if it is found by way of inference that the plaintiffs have on the balance of probabilities established their case against the first defendant without the evidence of the driver of the said m/van in order for the first defendant to answer their case, it is the respectful view of this court that the first defendant had sufficiently rebutted the plaintiffs' claim against him. On this score, the plaintiffs' claim ought to have been dismissed. In any event, it cannot be denied that it is not for the first defendant to built the case for the plaintiffs who themselves have not produced evidence or sufficient evidence to support or establish their case against the first defendant as alleged.

[22] In civil cases, the incidence of the burden of proof is generally determined by the pleadings which will reflect the issues to be determined. The plaintiff has the legal burden to prove its case on a balance of probabilities. In the instant appeal, the first defendant has given notice by the statement of defence that all the allegations framed against him in the statement of claim are denied. It is therefore incumbent for the plaintiffs to prove the

existence of those facts as alleged in the statement of claim under particulars of negligence as pleaded which the plaintiffs have failed to do. (See *Karumalay a/l Vanniyan & Anor v. Ananthan a/l Rethinam* [2005] 2 CLJ 429).

[23] On the question of onus, it is important to consider the "the fact that one does not believe evidence given for the defendant cannot make evidence for the plaintiff in any case". (See Greer, LJ *Hirschhorn v. Evens* [1938] 3 All ER). "Onus is always on a person who asserts a proposition or fact which is not self evident ... But onus as a determining factor of the whole case can only arise if the tribunal finds the evidence pro and con so evenly balanced that it can come to no such conclusion. Then the onus will determine the matter". (See *Robins v. National Trust Co.* [1927] AC Lord Dunedin at p. 520).

[24] In *Fardon lwn. Harcourt-Rivington* [1932] All ER 81, p. 83, Lord Dunedin said:

> The root of this liability is negligence and what is negligence depends on the facts with which you have to deal. If the possibility of the danger emerging is reasonably apparent, then to take no precautions is negligence, but if the possibility of danger emerging is only a mere possibility which would never occur to the mind of a reasonable man, then there is no negligence in not having taken extraordinary precautions". (Rujuk kes *K.R. Taxi Service Ltd & Anor lwn. Zaharah & Ors* [1969] 1 MLJ 49).

Lord Macmillan said:

> Members of the public motor owners, and pedestrians alike, in their use of the highway, owe to each other a duty to take care that they do not injure each other. The mere circumstance of being on a highway brings them into a relationship with each other from which relationship arises the duty to have regard for each other's safety. In each case the question is whether there is any evidence of such carelessness in fact as amounts to negligence in law – that is to breach of the duty to take care. To fulfil the duty the user of the road is not bound to guard against every conceivable eventuality, but only against such eventualities as a reasonable man ought to foresee as being within the ordinary range of human experience.

[25] In *Jafri bin Elias v. Khor Tan Seah* [1992] 2 CLJ 1016, His Lordship KC Vohrah (J)(as he then was) at p. 1019 said:

In my view it was unjustified for the judge to put liability at all on the defendant when the plaintiff had not discharged the onus of proof on him on balance of probabilities that the accident was caused by negligence of the defendant either wholly or partially and I therefore allowed the appeal of the defendant with costs. (See *Eastern Enterprise Ltd. v. Ong Choo Kim* [1969] 1 MLJ 236 at page 244).

[26] The appeal by the defendants against the finding of 100% liability against the first defendant is, therefore, allowed. The finding by the learned Sessions Court that the first defendant is 100% liable is set aside. The plaintiffs' claim against the defendants is dismissed with costs.

[27] By consent, the appeal by the defendants against the award of RM6,000 by the learned Sessions Court judge towards pain and suffering of the deceased until his death is allowed and set aside. As the defendants have withdrawn the appeal against the other awards, the appeal is dismissed.

Cross Appeal By Plaintiffs

[28] As to the cross-appeal by the plaintiffs on the award for loss of dependency, this court is of the view that based on the materials before the trial court, the award of RM500 per month by the learned Sessions Court judge is reasonable and there is no reason to interfere. The cross appeal by the plaintiffs against the award for loss of dependency is dismissed.

As agreed, each party to bear its own costs of the appeal. Deposit of the appeal is ordered to be refunded to the plaintiffs' solicitors.